

APPEAL NO. 010583

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on January 25, 2001. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for his 14th quarter. While she agreed that he was underemployed as a direct result of his impairment, she analyzed his self-employment and determined that it did not meet the requirements of a good faith search for employment.

The claimant appeals and argues that the hearing officer did not sufficiently analyze his efforts at increasing his business. The claimant asks that the decision be reversed. The respondent (carrier) responds that the evidence was properly analyzed and the decision should be affirmed.

DECISION

We affirm the hearing officer's decision.

The hearing officer did not err in finding that the claimant was not entitled to SIBs. The evidence presented was conflicting; the claimant's evidence of his restrictions from a low back injury was based upon last having been examined by his doctor in 1998, although he said he had talked to this doctor several times since. As the hearing officer observed, there was no current medical evidence presented. During the 13-week qualifying period, which ran from June 8 through September 6, 2000, the claimant said he bought and refurbished firearms and automobiles. His Application for [SIBs] (TWCC-52) showed that he sold two items for \$1,350.00; because he purchased these items, his profit was less than this amount. He said that he had subsequently sold a vehicle that he purchased within the qualifying period. The claimant said he was not able to do work on these items every day. The claimant also indicated that his ability to purchase items for restoration and resale was limited by his lack of funds. He sought no employment from third parties but contended he was "constantly" looking for items to restore and sell. He indicated he had bought items and repaired them for sale before the qualifying period in question.

The hearing officer has correctly summarized the substance of the decisions of the Appeals Panel regarding when self-employment will, or will not, be considered as fulfilling the requirements of a good faith search for employment under Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE §130.102(d)(1) (Rule 130.102(d)(1)). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ).

The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

Susan M. Kelley
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Michael B. McShane
Appeals Judge